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Insurance Commissioner
FiscalSTATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER*In the Matter of*

THOMAS J. FOREMAN,

Licensee.

Order No. 15-0020

WAOIC No. 750664

NPN No. 14942280

CONSENT ORDER LEVYING
A FINE AND SUSPENDING
LICENSE

This Consent Order Levying A Fine And Suspending License ("Order") is entered into by the Insurance Commissioner of the state of Washington, acting pursuant to the authority set forth in RCW 48.02.060, RCW 48.17.530 and RCW 48.17.560, and Thomas J. Foreman, ("Licensee").

BASIS:

1. Licensee is a Resident Insurance Producer licensed to do business in the state of Washington. He has been licensed in Washington State since September 18, 2009.
2. Licensee recommended that Insureds replace their \$925,000 Lincoln Benefit life policy with a \$1 million North American life policy. The Insureds agreed to apply and a new North American life policy was issued. The Lincoln Benefit policy had a \$7,436.32 cash surrender value. However a \$22,323.58 surrender penalty was incurred, leaving no net surrender value.
3. Question 3 of the replacement form asks "Will there be penalties or surrender charges under the existing insurance as a result of the proposed transaction?" Licensee incorrectly answered this question "no."

4. Although the replacement form was completed by Licensee, it was signed by Brian Berghout ("Mr. Berghout"), another producer in his office, under the heading "Signature of Agent or Broker." Mr. Berghout, who the Insureds claim never to have met, also signed the application under the heading "Signature of Soliciting Insurance Producer."

5. In a second meeting with Licensee, the Insureds were advised by Licensee to terminate their ING variable annuity and use the funds to purchase an Equitrust indexed annuity. The Insureds were told the rollover would be "tax free," and question 4 on the replacement form asking whether there will be any adverse tax consequences was answered "no." Both the application and replacement form in this transaction were signed by Licensee.

6. Licensee completed the ING liquidation form and directed that the proceeds were to be sent to the Insured's bank account. Licensee also completed a replacement form and a 1035 Exchange form. However, the 1035 Exchange form was not sent to Equitrust. The Insureds were instructed to write a check to Equitrust for \$138,000. They later learned that the full contract value of \$146,000+ was not remitted because ING had withheld 10% of the contract value for taxes due to a failure to check the withholding box on the form not to withhold any taxes. Had the Licensee correctly processed the transaction as a 1035 transfer, the full cash value of \$146,000+ would have been sent to Equitrust and the Insureds would not have received a 1099 showing an additional \$76,115 in taxable income. Without that additional taxable income, the Insureds estimated their tax obligation would have been \$5,434. Instead, it was \$15,802. Equitrust refunded \$7,950 in taxes leaving the Insureds to pay the difference of \$7,852.

7. WAC 284-23-440(2)(a) provides where a replacement is involved, the insurance producer shall present to the applicant, not later than the time of taking the application, a completed notice regarding replacement. By providing incorrect answers on replacement forms, Licensee violated WAC 284-23-440(2)(a).

8. RCW 48.17.530(1)(h) provides the commissioner authority to place on probation, suspend, revoke, or refuse to issue or renew an adjuster's license, an insurance producer's license, a title insurance agent's license, or any surplus line broker's license, or levy a fine in accordance with RCW 48.17.560 for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere. By representing that the annuity rollover would be "tax free" and then failing to submit a 1035 Exchange, Licensee demonstrated incompetence under RCW 48.17.530(1)(h).

9. RCW 48.30.180 provides that no person shall by misrepresentations or by misleading comparisons, induce or tend to induce any insured to lapse, terminate, forfeit, surrender, retain, or convert any insurance policy. By inducing the insureds to surrender or convert their existing policy and annuity by misrepresentations, Licensee violated the twisting statute, RCW 48.30.180.

10. RCW 48.30.210 provides that a person who knowingly makes a false or misleading statement or impersonation, or who willfully fails to reveal a material fact, in or relative to an application for insurance to an insurer, is guilty of a gross misdemeanor, and the license of any such person may be revoked. By failing to reveal a material fact on an application and replacement form for the life insurance rollover, to wit the identity of the actual soliciting agent, Licensee violated RCW 48.30.210.

CONSENT TO ORDER:

The Insurance Commissioner of the state of Washington and the Licensee agree that the best interest of the public will be served by entering into this Order. NOW, THEREFORE, the Licensee consents to the following in consideration of his desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle this matter upon such terms and conditions as are set forth below:

1. The Licensee acknowledges his duty to comply fully with the applicable laws of the state of Washington.

2. The Licensee consents to the entry of this Order, waives any and all hearing rights, and further administrative or judicial challenges to this Order.

3. By agreement of the parties, the Insurance Commissioner will impose a fine of \$4,000 to be paid within thirty (30) days of the entry of this Order.

4. By agreement of the parties, the Insurance Commissioner will SUSPEND the Licensee's Washington State insurance producer's license for a period of six (6) months, commencing on the date the Order is entered.

5. The Licensee understands and agrees that any further failure to comply with the statutes and regulations that are the subject of this Order constitutes grounds for further penalties, which may be imposed in direct response to further violations.

6. The Licensee's failure to pay the fine within thirty (30) days of the entry of this Order shall constitute grounds for revocation of the Licensee's insurance producer's license, and shall result in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the state of Washington.

7. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Licensee. However, the facts of this Order, and any provision, finding or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

EXECUTED this 4th day of March, 2015.

THOMAS J. FOREMAN



AGREED ORDER:

Pursuant to the foregoing factual Basis and Consent to Order, the Insurance Commissioner of the state of Washington hereby Orders as follows:

1. The Licensee shall pay a fine in the amount of \$4,000.
2. The Licensee's failure to pay the fine within thirty (30) days of the entry of this Order shall result in the revocation of the Licensee's insurance producer's license and in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General for the state of Washington.
3. Licensee's Washington State insurance producer license is SUSPENDED for a period of six (6) months, commencing on the date the Order is entered.
4. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Licensee. However, the facts of this Order, and any provision, finding or conclusion contained

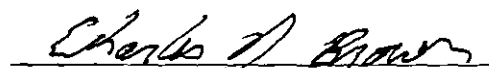
herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

ENTERED this 6th day of March, 2015.



MIKE KREIDLER
Insurance Commissioner

By and through his designee



Charles D. Brown
Insurance Enforcement Specialist
Legal Affairs Division